

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Convergence Entertainment and Communications, LLC)	Facility ID No. 48412
)	
)	
Reclassification of License of Class A Television)	
Station WBVT-CA)	
Burlington, VT)	

ORDER

Adopted: March 19, 2013

Released: March 20, 2013

By the Chief, Video Division, Media Bureau:

1. The Commission has before it for consideration a Petition for Reconsideration¹ filed by Convergence Entertainment and Communications, LLC (Convergence), seeking review of a letter decision reclassifying WBVT-CA, Burlington, Vermont from a primary status Class A television station to a secondary status low power television station (LPTV) November 7, 2012.² For the following reasons, we dismiss the Petition for Reconsideration.

I. BACKGROUND.

2. Class A television stations are accorded primary spectrum use status pursuant to the Community Broadcasters Protection Act of 1999 (CBPA).³ By letters dated March 25, 2011 and August 3, 2011, the Video Division of the Media Bureau requested information from Convergence regarding its apparent failure to make the required filing of quarterly FCC Form 398 (Children's Television Programming Report) for the station for the third and fourth quarters in 2009 and all four quarters in

¹ Convergence Entertainment and Communications, LLC, Petition for Reconsideration (dated Dec. 14, 2012).

² *Reclassification of License of Class A Television Station WBVT-CA, Burlington, VT*, Order, 27 FCC Rcd 13550 (Vid. Div. MB 2012) (*Reclassification Order*).

³ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336. Beginning on the date of its application for Class A license and thereafter, the CBPA requires that a station must be “in compliance with the Commission’s operating rules for full-power television stations.” 47 U.S.C. § 336(f)(2)(A)(ii); *see also Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366 (2000), Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8254-56 (2001); 47 C.F.R. §§ 73.6001, 73.6026. WBVT-CA was granted Class A television status in 2002. *See* FCC File No. BLTTA-20001208AED (granted Mar. 27, 2002).

2010.⁴ Both letters required that the information be provided within 30 days of the date of the letter and cautioned that failure to provide the information could result in a change of the station's status from Class A television to low power television. Convergence failed to respond to the Division's letters or to file the required Children's Television Programming Reports. Accordingly, pursuant to Section 316(a) of the Communications Act of 1934, as amended,⁵ on February 28, 2012 the Video Division issued an *Order to Show Cause* why the license for WBVT-CA should not be modified to specify the station as a low power television station.⁶

3. Convergence was afforded until March 30, 2012 to file a written statement why its license should not be so modified and was also notified that if no written statement was filed by that date, it would be deemed to have consented to the modification of the WBVT-CA license from Class A television status to low power television status. The *Reclassification Order* held that because Convergence did not file a written statement in response to the *Order to Show Cause*, it deemed it to have accepted the modification of the WBVT-CA license to low power television status.⁷ Further, because Convergence failed to file Children's Television Programming Reports (FCC Form 398) for the period 2009 through 2011 and had not responded to the Video Division's two letters regarding this failure or to the *Order to Show Cause*, the *Reclassification Order* concluded that it has not fulfilled its obligations as a Class A licensee, and that the modification of its Class A license to a low power television license therefore serves the public interest. To date, the Commission's licensing system shows that Convergence has still not filed its FCC Form 398 for the third quarter of 2009.⁸

4. In its Petition, Convergence argues that the Station's Class A status should be restored for three reasons, including an assertion that it did not receive "actual notice" of the Commission's inquiry into its children's programming reporting compliance. However, Convergence concedes that it did receive the *Reclassification Order*.⁹ Convergence does not specifically seek a waiver of the statutory deadline or the Commission's rules, and provides no explanation for why it filed its petition a week late.

⁴ See 47 C.F.R. §§ 73.671, 73.3526 and 73.6026.

⁵ 47 U.S.C. § 316(a).

⁶ *Reclassification of License of Class A Television Station WBVT-CA, Burlington, VT, Order to Show Cause*, 27 FCC Rcd 2136 (Vid. Div. MB 2012) (*Order to Show Cause*). In addition to the period covering 2009 and 2010, the *Order to Show Cause* noted that Convergence had also failed to file Children's Television Programming Reports for all four quarters of 2011.

⁷ 27 FCC Rcd at 13551 para. 3 n.5 (citing 47 C.F.R. § 1.87(g)(1), (h) (Absent good cause shown, the right to file a protest or have a hearing is waived if licensee does not file a timely protest or statement of intent to appear at a hearing, and "[w]here the right to file a protest or have a hearing is waived, the licensee . . . will be deemed to have consented to the modification as proposed and a final decision may be issued by the Commission accordingly.")).

⁸ See <http://licensing.fcc.gov/KidVid/public/report/10/query.faces> (last visited Mar. 5, 2013).

⁹ Petition at 8.

II. DISCUSSION

5. We find that the Petition for Reconsideration was untimely filed. Section 405(a) of the Act, as implemented by section 1.106(b) of the Commission's rules, specify that petitions for reconsideration must be filed within 30 days of the public notice of the underlying order.¹⁰ The December 14, 2012 filing date is past the 30-day deadline for filing a petition for reconsideration of the *Reclassification Order* that was issued on November 7, 2012.¹¹

6. The United States Court of Appeals for the District of Columbia Circuit has consistently held that the Commission is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act,¹² absent compelling circumstances.¹³ We note the filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹⁴ We do not believe that Convergence has shown such compelling or extraordinary circumstances to be present here. Accordingly, we lack the power to excuse the late-filed pleading based on the facts before us, and dismiss the Petition as late-filed.

¹⁰ 47 C.F.R. § 405(a) (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.”); 47 C.F.R. § 1.106(b) (“The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action . . .”)

¹¹ Moreover, the Commission does not have any record that the Petition was ever filed with the Secretary's office, as required by the Commission's rules. See 47 C.F.R. §§ 1.4, 1.106.

¹² See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

¹³ See *Reuters, Ltd. v. FCC*, 781 F.2d at 952 (holding that express statutory limitations barred the Commission from acting on a petition for reconsideration that was filed after the due date); *Gardner v. FCC*, 530 F.2d at 1091 (excepting where “extraordinary circumstances indicate that justice would thus be served”).

¹⁴ See, e.g., *Panola Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978) (dismissing petition for reconsideration that was filed one day after the statutorily allotted time for filing requests for reconsideration); *Metromedia, Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909 (1975).

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED That pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Convergence Entertainment and Communications, LLC on December 14 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreissman
Chief, Video Division
Media Bureau